

QUESTIONS AND ANSWERS ON ASSISTED LIVING REFORM ACT

Acronyms

Adult care facility = ACF

Assisted living residence = ALR

Enhanced assisted living residence = EALR or EAL

Special needs assisted living residence = SNALR or SNAL

Licensed Home Care Services Agency = LHCSA

Certified Home Health Agency = CHHA

Long Term Home Health Care Program = LTHHCP

A. WHAT TYPES OF FACILITIES MUST APPLY FOR ALR LICENSURE?

1. Who must apply for ALR licensure?

You **must** apply for ALR licensure if: (a) your facility provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents unrelated to the operator or provider; and/or (b) your facility holds itself out as assisted living, assisted living residence or assistive living, or uses words or terms to that effect in describing and/or marketing itself to the public.

In addition to applying for ALR licensure, you must apply for certification as an EALR if you provide EALR care and/or market yourself as allowing persons to age in place. You must apply for SNALR certification if you market yourself as providing care to a special needs population, such as persons with dementia.

2. Define a “look-alike” versus independent senior housing.

There is no official definition of a “look-alike.” It is an informal term used to describe housing entities that provide services that “look like” those which require licensure as an adult care facility. The definition of independent senior housing is:

A housing setting serving seniors in which no individual or entity provides, arranges for or coordinates (either directly or indirectly) on-site monitoring as defined by Public Health Law § 4651(12), and either personal care or home care services for five or more residents of such housing setting unrelated to the housing provider; and in which neither the housing setting nor other services provided in such setting are advertised or marketed to the public as assisted living, assistive living or any derivation of such terms.

The provision, arrangement or coordination of one or more of the following services shall not, in and of itself, require licensure as an ALR: room, board, laundry, housekeeping, transportation, information and referral case management, security or “concierge”-like services.

3. Can a currently unlicensed program continue to provide the same services, but change its name from "assisted living" to something else and thus avoid being required to seek licensure as an ALR?

The answer will depend on the services that are provided. An entity that provides or arranges for on-site monitoring and personal care services and/or home care services (either directly or indirectly) or wishes to provide these services, or wishes to offer EALR and SNALR services, must also be licensed as an ALR.

4. I oversee an independent living community. I received a copy of the June 3, 2005 letter and ALR application form. I don't understand why this information was sent to me. Am I required to apply for ALR?

The Department sent this information to every licensed adult care facility and every unlicensed facility of which it is aware. The fact that you got this information does not in and of itself mean that you are required to apply for licensure.

5. **Facilities that have received funding through HUD under Section 1701 (q)(e), the Assisted Living Conversion Program, are required to apply as an ALR. Licensed beds under the Assisted Living Program are exempt. Do facilities that have beds under both programs need to apply as an ALR?**

Yes. The facility must apply for ALR licensure for the Assisted Living Conversion Program beds that are not included in the facility's certified ALP capacity.

6. **The June 3, 2005 letter defines independent senior housing as a "setting in which no individual or entity provides, arranges for or coordinates (either directly or indirectly), on-site monitoring as defined by §4651(12) of the Assisted Living Reform Act. §4651(12) defines monitoring as: "Monitoring" means an ability of the assisted living provider to respond to urgent or emergency needs or requests for assistance with appropriate staff, at any hour of any day or night of the week. Such monitoring must be provided on site. Many senior housing facilities use "Life Line" or other response systems where a security staff is the first responder to resident emergency (and calls for EMS services) and non-emergency requests. Will these facilities be required, due to this service alone, to apply as an ALR?**

No. The law defines an "Assisted Living Residence" as meaning an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more residents unrelated to the assisted living provider. A housing entity that merely provides housing and a "life line" type system to five or more adults unrelated to the housing provider would not fit this definition because it does not provide on-site monitoring **AND** personal care services **AND/OR** home care services.

7. **The Department's cover letter for the new ALR application defines "assisted living" as "an entity which provides or arranges for housing, on-site monitoring, personal care services and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents unrelated to the assisted living provider." Does this mean that an independent living residence where meals and housekeeping services are provided by the residence, but the residents make their own contractual arrangements for any personal care/home care services they require, will not be considered "assisted living" and therefore will not be subject to the new law?**

If a housing entity does not provide or arrange for on-site monitoring **AND** personal care services **AND/OR** home care services (either directly or indirectly) to five or more persons unrelated to the assisted living provider, it will not meet the definition of "assisted living." Whether a given combination of housing and services meets this definition will depend on a case by case review of the facts and the nature of the resident population. A number of factors may be reviewed. These will include the relationship, if any, between the housing provider and the entities that provide personal care and home care. Facilities that are not sure whether ALR licensure is required should phone 518-408-1624 to discuss their situation.

8. **My organization is a new Continuing Care Retirement Community (CCRC). We have applied for licensure as an enriched housing program. We have submitted Part 2 of the Article 7 application and are waiting for final approval. We also want this facility to be licensed as an ALR and certified as an enhanced ALR. Do we have to reapply for ALR and EALR designations? Why? We have already submitted all of this information to you in our Article 7 application.**

Yes. If you want ALR licensure and EALR certification, you must apply using the DOH-4355 application form. However, as noted in the directions for most sections in the application form, you do not have to resubmit any information already on file with the Department in connection with your Article 7 application.

9. The June 3, 2005 letter states that CCRCs are exempt from having to apply. Currently, all CCRCs have an ACF level of care, yet not all may need to market as “assisted living” and therefore apply for the ALR licensure. Can you discuss the situations in which a CCRC should apply or may want to? What might they need to consider? Can CCRC contract holders be exempt from completing the ALR resident admission agreement?

The letter states that CCRCs that are not currently operating or proposing to develop assisted living residences as defined by the Assisted Living Reform Act are exempt. CCRCs that operate or propose to operate an ALR must apply for a license to do so. Any CCRC that markets itself as serving persons with special needs, including dementia, must apply for ALR and Special Needs certification. Any CCRC that markets itself as providing assisted living or by a similar term, must apply for ALR licensure or cease marketing as such. Any CCRC that would serve (outside of a licensed nursing home) persons who meet the thresholds for enhanced living set forth in the statute would also need to seek ALR licensure.

The advantage of being an ALR is that the facility can then also be an EALR and offer aging in place services. It can become a SNALR and offer specialized care. CCRCs that offer these options may be more competitive than those that do not.

All ALRs, including those operated by CCRCs, must maintain compliance with all ALR requirements, including those governing the resident admission agreement. The Department has issued a model admission agreement, available on its website. ALRs may use an alternative resident admission agreement with the prior approval of the Department.

10. What does the exemption for CCRCs in Article 46-B (PHL § 4651(1)(b)) exempt them from?

This exemption essentially means that a CCRC, regardless of whether it has an adult home and/or enriched housing program, does not have to apply for ALR licensure unless it “trips” one of the following ALR licensure triggers:

- It markets itself as “assisted living”, “assistive living” or any similar term;
- It markets itself as serving persons with special needs including but not limited to persons with dementia;
- It serves in a residential setting (outside of a nursing home) persons who meet the definitions of “enhanced assisted living” (see PHL §§ 4651 (14) and (15)); and/or
- It markets itself as providing “aging in place” within a particular residence (as opposed to having lifetime care needs met through a continuum of care as provided by a CCRC.)

11. If a CCRC has its own LHCSA to serve residents of the CCRC, would that trip the definition of ALR?

No. The mere fact that a CCRC has its own LHCSA does not necessarily mean that ALR licensure is required. If the CCRC trips one of the four ALR triggers, it would be required to seek ALR licensure.

12. May a CCRC that has an adult home or enriched housing program apply for ALR licensure, and SNALR and EALR certification?

Yes.

13. Can I apply for ALR licensure for only a portion of the beds on my operating certificate?

No. If you want or are required to have ALR licensure, it must be for all beds on your operating certificate.

14. An 80 bed enriched housing program has a 20 bed approved dementia unit. Must it apply for ALR licensure and SNALR certification?

Yes. SNALR certification is required for the 20 beds in the dementia unit. SNALR certification is available only for licensed ALR beds. As ALR licensure is required for the 20 SNALR beds, you must apply for ALR licensure for all 80 beds on your operating certificate.

15. My adult care facility has 30 adult home beds and 50 enriched housing beds. What are my options in terms of how many adult home beds and how many enriched housing beds can be licensed as ALR beds?

If your licenses are for a single building, your application(s) for ALR licensure must include all non-ALP beds listed on the operating certificates.

16. I understand the “all or none” requirement for ALR licensure. But what are my options for EALR and SNALR beds?

The “all or none” rule does not apply to EALR and SNALR. You may request approval for all or a portion of your licensed ALR capacity.

17. How does the Department intend to identify the places that need to be licensed as ALR?

The Department’s regional office inspectors will continue to identify unlicensed facilities that require ACF or ALR licensure using the same procedures that they have used in the past. Facilities that come to their attention that might require licensure or whose residents have service needs that exceed the services that the facility is licensed to provide, will receive an onsite visit and investigation. A determination of the need for licensure will be made based on the findings of the site visit.

18. I run a boarding house. Do I need to comply with the terms of the application cover letter?

If your residents receive and need only room and board, your facility does not require licensure as an adult care facility or as an ALR.

19. I run an unlicensed facility. What licenses do I need?

Review the June 3, 2005 letter carefully and decide, based on the services you provide and residents’ needs, what licenses and certifications you need.

20. My organization runs thirteen adult homes. We want two of them to be EALRs. Do we need to apply for ALR licensure for all thirteen, or for only the two for which we want EALR certification?

You may apply for ALR and EALR licensure for just the two adult homes.

21. Is there a deadline for unlicensed facilities to notify the Department about their existence?

Yes. You must have applied for licensure by August 2, 2005.

22. My facility is a licensed adult home. I do not plan to hold my facility out as assisted living or as providing specialized care to any particular population. I do not wish to provide aging in place services. I am in compliance with all rules and regulations, I do not have any residents who are not appropriate for my facility, and I intend to keep it that way. Am I required to apply for ALR licensure?

No.

23. Can a facility apply for SNARL without applying for EALR?

Yes.

24. My facility is a 40-bed licensed ALP. Do I have to submit any part of the ALR application?

No. ALPSs are exempt. If you have beds in your facility that are not designated as ALP beds and are advertising, marketing or delivering services requiring ALR licensure, then you need to submit an application for this portion of your capacity.

25. If I intend to use the model tools developed by the Department, do I have to include a copy of each one with my application for ALR?

PHL §4653 states that the ALR application must include “verification that the operator has a valid residency agreement in compliance with this article... and shall include a copy of the information to be included in the residency agreement and disclosures as required ...” Therefore, your application must include a copy of your proposed residency agreement regardless of whether you plan to use the model developed by the Department. You must also include copies of all information and forms listed in Section G of the ALR application form.

26. If you currently have an ACF operating certificate with a retention standards waiver and apply for an enhanced assisted living license, will you have to resubmit all operational information (policies/procedures, staffing, job descriptions, etc.) previously submitted, or will an approved retention waiver be accepted?

Many retention standards waivers were issued over 15 years ago. The resident populations have changed significantly, as have some standards of care. Furthermore, the aging in place provisions for EALRs enable them to retain residents who need a higher level of care than those typically retained under the Retention Standards Waiver Program. Thus you must complete the ALR application form as directed. You may not refer to an approved retention standard waiver as a substitute for providing the requested information.

27. We are a new facility with an EH application currently under DOH review. We wish to apply for ALR in the near future, but are not ready yet. How do we comply with the 60-day response deadline? Is a letter of intent acceptable?

The answer to this question assumes that the facility does not currently require ALR licensure and will continue to operate in a manner that does not trigger ALR licensure requirements until an application for such licensure is approved. Please complete section A of the ALR application, indicate that you are not applying for ALR certification at this time, and return the form to the Department of Health. This does not prevent you from applying at a later date. If you wish to do so, you can attach a letter of intent to apply for ALR/EALR/SNALR at a future date.

28. We are a housing authority with two high rise apartment buildings. We have some licensed EHP beds in both buildings. Each building has its own EHP operating certificate. Can we combine the EHP beds in both buildings on a single operating certificate for purposes of ALR licensure?

No. Separate buildings require separate operating certificates. However, you could close all of the EHP beds in one building and open new EHP beds in the other building. If you choose to do this, you need to submit a plan of closure to your Department of Health regional office for all of the beds you will be closing in one building, and apply to the Department to increase the capacity accordingly on the operating certificate for the other building.

29. Does an adult home or enriched housing program that has its own LHCSA or limited LHCSA, or that contracts with a LHCSA to provide home care services to residents, have to apply for ALR licensure?

No. Many adult homes and enriched housing programs also have LHCSAs or limited LHCSAs that serve ACF residents, and this in and of itself does not require licensure as an ALR. The exemption for adult homes and enriched housing programs at PHL §4651(1)(i) applies. If the facility is not holding itself out as assisted living or as providing specialized care, and is not required to obtain EALR or SNALR certification, it is not required obtain ALR licensure. Facilities required to obtain EALR certification are those that meet the terms of PHL §4651 (14) and (15). Facilities required to obtain SNALR certification are those that hold themselves out as providing specialized care (PHL §4655 (5)).

B. APPLICATION PROCESS

1. As a licensed adult home or enriched housing program, must we respond to this within the 60 days if we are uncertain how we plan to proceed?

Yes. Complete only Section A and submit this section to the address on page 12 of the application.

2. I have a licensed adult home and enriched housing program. Do I still need to use the ALR application form (DOH-4355) to get enhanced assisted living and special needs assisted living certification?

Yes. Complete all sections of the application for ALR, EALR and SNALR according to the directions on the form.

3. How can a facility change its name to indicate that it is an ALR?

Facilities that wish to change their names should include a proposed Certificate of Assumed Name (d/b/a) in their application for ALR licensure.

4. Will there be a “typeable” ALR application form available on the Department’s website?

Not at this time. The application on the Department’s website is a PDF document that must be downloaded and printed out in order to be completed. However, if you have software that can turn a PDF document into a WORD document, you could work with it as a “typeable” document. If you do translate the form into a WORD document and complete it on your pc, take care to avoid deleting any text.

5. My facility is a licensed adult care facility. You already have a lot of the information required to be submitted in the ALR application. Do I have to resubmit this information?

No. As noted in the directions for most sections, you do not need to resubmit any information that has already been filed with the Department. But you must state this on your ALR application for each item

that requests information and document how this information was originally forwarded to the Department. Do not leave any item on the ALR application blank.

6. Why does an EALR applicant that is an adult home or enriched housing program and that proposes no modifications or changes to its physical environment, have to complete Section D (Architectural Feasibility) of the ALR application? Isn't this inconsistent with the June 3, 2005 letter? According to the letter, these buildings are existing structures and if there is a valid Certificate of Occupancy for the building, "the Department will accept an architect's or engineer's letter of certification signed by a registered architect (RA) or professional engineer (PE) certifying that the building(s) under consideration meets all applicable codes, rules and regulations." Also, the owners of an old building may simply not know the answers to item D2 and may have no way of finding out.

If the facility is a licensed AH or EHP, please answer the questions in Section D to the best of your knowledge or the information in your records. Include a photocopy of the Certificate of Occupancy and requested letter of certification from a registered architect or professional engineer. DOH staff will contact you if additional information, or clarification of the information you were able to provide, is required.

7. Section D Architectural Feasibility, item 3 asks for sketches. What sketches do you want?

Section D item 3 states that the following sketches are needed: plot or location plan; floor plan showing room usage; one building elevation; typical building or wall elevation; and mechanical, electrical and sprinkler systems, explanation or description.

8. This question concerns ALR/EALR/SNALR application form (DOH-4355 (5/05)), page 8, Section F, Services Program, item 8. What documents is this item referring to?

Such documents include any additional information that the applicant may have in support of its responses to the items in Section F.

9. I am applying for ALR licensure and EALR certification. Do I need to complete Section H Financial Information?

Operators of licensed ACFs must complete Section H. Operators of unlicensed facilities do not need to complete this Section.

10. This question concerns ALR/EALR/SNALR application form (DOH-4355 (5/05)), page 3, Section C, Legal Documentation. We have a pending application to be a limited liability corporation (LLC). Do we still have to complete this section?

Yes. The application is intended to be completed by entities that: have a licensed adult home or enriched housing program; have a pending application; or are not licensed and have no pending application. With respect to legal documentation, the applicant is not required to submit information that has previously been submitted to the Department. However, information that is updated or different from previous submissions must be submitted together with the ALR application. For an applicant that is a LLC, the new submission would include a proposed amendment to the articles of organization to add the corporate purposes language for an ALR, and EALR and/or SNALR if such additional certifications are sought. A revised LLC operating agreement reflecting the additional authority to operate ALR/EALR/SNARL must also be submitted. In addition, each ALR applicant must include such other legal documentation as: management agreements; certificates of doing business as or business certificates, deeds, leases or other site control documents, to the extent such documentation differs from the documentation previously submitted as part of an ACF application.

11. Can facilities submit audited financials instead of filling out Section H (Financial Information)?

No.

- 12. Schedule 2A, which must be completed by ALR applicants who are not in good standing, requires a character and competence review of board members, officers, etc. How does this information determine if the applicant is of good moral character and competent to operate the residence?**

Department staff uses this information as the starting point in collecting whatever additional information they require, including felony history, for the character and competence determination.

- 13. What is the effective date of the DOH certifications?**

The effective date is the date that is stated on the facility's operating certificate when issued.

- 14. We will be submitting simultaneous ACF and ALR/EALR/SNALR applications for numerous facilities which are currently not licensed ACFs. We will also submit ALR/EALR/SNALR applications for licensed ACFs with change of ownership applications. Sections E, F and G of the ALR/EALR/SNALR application contain ACF (i.e., Article 7) application Part 2 information. When do we use the Article 7 application for ACF licensure, and when do we use the ALR/EALR/SNALR application for ALR licensure and EALR/SNALR certification?**

You must submit a complete and separate Certificate of Need Article 7 application for each facility that does not have an ACF license. Simultaneously, submit a separate application for ALR/EALR/SNALR licensure and certification for each facility, as appropriate to your plans for the approved ACF beds in each facility. Where the information required in the ALR/EALR/SNALR application for a specific facility is the same as the information you have already provided in the Article 7 application for that specific facility, you may reference the Article 7 application or you may repeat the information. Do not leave any item in the ALR application blank.

- 15. With respect to the beds requested in each category (ACF/ALR/EALR/SNALR), how should we note those beds which will swing or float between levels? In some communities, certain rooms or apartments may be used for different levels, depending on the current demands and needs. For example, in a facility with a total capacity of 200 licensed ACF beds, perhaps 50 of those beds might be used as ALR, EALR or SNALR. How would you like us to document this situation?**

You may apply for ALR licensure for either all or none of the beds on each operating certificate. You may not apply for ALR licensure for only some of the beds on an operating certificate. In this example, if all 200 ACF beds are on the same operating certificate and you want ALR licensure, all of them must be ALR beds.

EALR beds can be swing beds as long as: (a) the number used for EALR does not exceed the number approved by the Department, and (b) any bed used as an EALR bed is in compliance with all applicable rules and regulations. If you propose to use the floating bed approach for EALR services, describe in your application how you will ensure that all applicable rules and regulations are met.

SNALR beds must be fixed. They cannot float.

- 16. The June 3, 2005 letter indicates that the due date for applications is 60 days from the date of receipt of that letter. What is the exact due date? Will the applications be processed in order of receipt or by some other method?**

Applications are due within 60 calendar days of the date of the letter, which is June 3, 2005. The due date was Tuesday, August 2, 2005. Processing time will vary according to application type.

17. This question concerns ALR/EALR/SNALR application form (DOH-4355 (5/05)), page 2, Section B, Status of AH or EHP Operating Certificate. My facility is operated by a partnership. If I check boxes c, d, e, f and/or g, do I and each of my partners have to complete Schedule 2A – Personal Qualifying Information?

Yes. Every partner, person who has ownership of the facility, board member and officer must complete Schedule 2A. In addition, any other individual who has oversight and responsibility for facility operations must complete this schedule.

18. This question concerns ALR/EALR/SNALR application form (DOH-4355 (5/05)), page 6, Section E, Plan for Administration. We have retention standards waivers. Do we have to complete this section?

The directions for completing this section are found at the beginning of the section. It does not matter whether the applicant has retention standards waivers. As stated in the directions, if you are applying for only ALR licensure, do not complete this section. If you are applying for EALR and/or SNALR certification, complete this section as directed.

19. We have a six bed ALP. Should revenue and expenses for these individuals be included in the current annualized operating budget in Section H?

Yes, you may include ALP costs and revenues. If you do so, you must indicate in your application that you have included ALP revenue and expenses in the charts in Section H.

20. If a facility that was on the "Do Not Refer" list has resolved the issue of concern and has since been removed from the list, why wouldn't it be considered "in good standing"?

The Assisted Living Reform Act precludes this. The Act defines a facility that is "not in good standing" as one which was placed on and/or removed from the "Do Not Refer" list in the past three years. The Act requires operators and owners of such facilities who apply for ALR licensure to undergo a full character and competence review.

21. There are several parts of the application that you are not required to complete if you have an approved dementia program, but are required to complete it if you are applying for the EALR. Why is this information needed for the EALR? A lot of duplicate info may be submitted if this is the case.

Applicants for SNALR who have an approved dementia unit have already submitted nearly all of the information needed for SNALR certification. Thus such facilities are not required to answer all of the SNALR questions. EALRs and SNALRs have different requirements and standards, and thus the information requirements are different.

22. I have a licensed adult home with 72 beds. Also on the campus is a 70 unit independent living building. Can I just expand my adult home license to include the 70 independent living units without submitting an Article 7 application for these units?

No. You must submit an Article 7 application to expand your licensed capacity.

23. I have a licensed ACF and I do not understand the legal documentation requirements in Section C of the ALR application form. What does the “purposes” language actually mean?

If the ALR applicant is a corporation or limited liability company, the appropriate organizational document (certificate of incorporation or articles of organization) will need to be amended to include the applicable corporate purposes language that reflects the type(s) of ALR that the applicant proposes to establish and operate. The organizational document must be amended to authorize the applicant to lawfully undertake the activity of establishing and operating a licensed assisted living residence.

24. Does an already licensed adult care facility need to send in an appropriate organizational document, such as a certificate of incorporation or articles of organization, or would DOH have that information on file?

Licensed adult care facilities need not resubmit appropriate organizational documents, such as certificate of incorporation or articles of incorporation, if the information in these documents has not changed. Such applicants should note in Section C of their ALR applications that they are not resubmitting these documents because the Department has them on file and there are no changes to them. However, such applicants will need to submit appropriate amendments to such documents to enlarge the authorized purpose of the corporation or LLC.

25. Our facility has a pending application for change in operator. We want to apply for ALR licensure. Who should file the ALR application?

The current operator should submit the application. Unless your facility was required to submit an ALR application by the August 2, 2005 due date, you may wish to delay submission until after the new operator is approved.

26. For licensed ACFs, is it necessary to submit architectural descriptions and plans (Section D – Architectural Feasibility) if there have been no substantial changes since they were licensed? Considering the fact that the application is only intended to collect new or changed information (and not information that is duplicative of the information submitted for ACF licensure) is it appropriate for applicants to state that there is no modification to the existing physical plant (Q.1) and then describe their compliance with the fire safety requirements (Q.4), thereby 'skipping' Q.2 and Q.3.

Q.2 and Q.3 can be skipped if an existing licensed EHP or AH remains in compliance with applicable codes and regulations that were in effect at the time the facility was initially licensed, and any subsequent modification (expansion, alteration and/or renovation) to the building(s) was done with Department of Health and local AHJ (authority having jurisdiction) approval. However, Q.4 and Q.5 would have to be completed and accompanied with a letter of certification completed and signed by a registered architect or professional engineer licensed to practice in NYS.

C. RETENTION STANDARDS WAIVER PROGRAM

1. I am a licensed adult care facility with retention standards waivers. Can I keep these waivers if I apply for ALR licensure? Can I keep these waivers if I do not apply for ALR licensure?

Yes. Regardless of whether you apply for ALR licensure, you can keep these waivers, but ***only for the residents who are currently retained under the waived retention standards***. The Department is phasing out the retention standards waiver program because the EALR program takes its place. Retention standards waivers apply only to residents currently living in the facility who would have to be discharged ***now*** absent the waivers. As additional residents age, become more frail, and “trigger” a retention standard, ACFs and ALRs that are not certified EALRs must discharge them to a more appropriate level of care. Such residents could be discharged to, for example, an EALR.

- 2. If a facility is planning on applying for an ALR license but not for EALR or SNALR certification and has a retention standard waiver with one resident in the waiver program, does it need to apply for an enhanced assisted living certificate?**

No. However, it cannot retain any additional residents under the waiver. The waiver expires when the current resident is discharged from the facility or dies.

- 3. If a resident is living in an SNALR and his condition deteriorates to the point that he triggers one or more retention standards, must he be discharged if the SNALR does not have EALR certification?**

Yes.

- 4. What happens to our existing ACF waivers should we not apply for ALR?**

The Retention Standards Waiver Program is being phased out. ACFs with retention standards waivers may retain only the residents to whom these waivers currently apply. As additional residents age, become more frail and trigger a retention standard, they must be discharged to a more appropriate level of care. A more appropriate level of care could be an EALR. ACFs that do not apply for ALR licensure may retain all other approved waivers that they may have.

D. SERVICES

- 1. Is ALR 24-hour care?**

Certain services, such as on-site monitoring and supervision, must be available on a 24-hour a day basis. The availability of other services will depend on a residence's policy and expectations defined in its residency agreement.

- 2. Will residents be allowed to die at home under hospice care?**

Yes. Enriched housing program and adult home residents may receive hospice care. These facilities do not need any additional licenses or certifications to allow a licensed hospice to provide hospice care to their residents. However, the same retention standards apply to hospice residents as to all other residents.

- 3. If my facility has an assisted living residence license and a resident requires hospice services (above and beyond what I can provide as an ALR), do I have to have enhanced assisted living certification to retain this resident?**

No. Residents of adult homes and enriched housing programs may receive care from a hospice. The facility does not need ALR licensure or enhanced assisted living certification to allow residents to receive hospice services.

- 4. Are the medication assistance requirements for ALRs, EALRs and SNALRs different from those for ACFs without these additional licenses and certifications?**

No. The requirements for adult homes are more specific and detailed than those for enriched housing programs, but these requirements do not change if the facilities are also ALRs, EALRs and/or SNALRs.

- 5. What are the criteria for medication assistance?**

The requirements for medication assistance in adult homes are located in Title 18 of the Social Services Law, Section 487.7(f). The requirements for medication assistance in enriched housing programs are located in Title 18 of the Social Services Law, Section 488.7(d). In addition, the Department provided all licensed adult care facilities with regulatory interpretations of these requirements. A copy of DAL 05-03 (Regulatory Interpretation for Medication Assistance, January 25, 2005) can be obtained by phoning 518-408-1133.

6. Regarding medication assistance, are we expected to coordinate the ordering of all prescriptions for all residents, even for those whose doctors have stated they are capable of self-managing their medications? It is our understanding that as long as residents keep us informed regarding all of their current medications they are permitted to fill their own prescriptions (with the doctor's authorization).

Your understanding is correct. ALRs are not required to coordinate the ordering of prescriptions for residents whose doctors have stated they are capable of self-managing their medications.

7. As either an ACF or an ALR, will we need a separate medication room? If so, can we get a waiver?

There is no requirement to have a separate medication room. The requirements for medication storage outlined at §487.7(f) for adult homes and at §488.7(f) for enriched housing programs, apply.

8. Regarding medication assistance, if a resident's doctor has stated that the resident is not capable of self-management of medications, in all cases must we keep those medications locked up in the resident's room? Must the locked box be permanently mounted to the wall or counter, or may it be portable? May we use combination locks or must they be keyed locks?

If the resident's physician says that the resident is not capable, the facility must hold the medications in compliance with requirements at §487.7(f)(11). That section requires the medication cabinet must not be removable, and only opened with a key. Combination locks are not acceptable.

9. Does an EALR or SNALR have to hold a LHCSA license to provide home care services to residents?

No. EALRs and SNALRs may with their own employees provide within the ALR services similar to those provided by operators of Article 36 approved home care. These services include nursing services, home health aide services, medical supplies, equipment and appliances, and other therapeutic and related services which may include physical and occupational therapy, speech pathology, nutritional services, medical social services, personal care services, homemaker services and housekeeper services which may be of a preventive, therapeutic, rehabilitative, health guidance and/or supportive nature. Alternatively, the facility may provide these services through a LHCSA, CHHA or LTHHCP.

10. If EALR or SNALR employees provide services that LHCSAs traditionally provide, does the facility have to have a policy and procedure for each service, comparable to the policy and procedure that LHCSAs are required to have?

Yes.

11. If EALR or SNALR employees provide services that LHCSAs traditionally provide, what standards will inspectors use to evaluate compliance during an inspection?

The Department is developing standards that will apply to all approved EALRs and SNALRs. In addition, the operator will have to comply with all of the terms of its approved application and plan.

12. If EALR or SNALR employees provide the services that a home health aide provides, or that a

personal care aide provides, are these employees required to have state-approved training? If yes, may the EALR or SNALR provide the training? If yes, what is the procedure for an EALR or SNALR to obtain state approval of its curriculum?

Yes, home health and personal care aides must be appropriately trained as per state requirements at 10 NYCRR 700.2(b). If the facility charges a fee for providing the training, it must use, or base its curriculum on, the State Education Department's curriculum. If it does not charge a fee, it must use, or base its curriculum on, the Department of Health's curriculum. The facility must submit its proposed curriculum to the appropriate Department for approval. Additional information is available from the Bureau of Home Care and Hospice Surveillance at 1-518-408-1638.

13. My facility plans to apply for licensure as an adult care facility. What license or certification do we need to be able to hire a nurse as an employee? What would this nurse be able to do in our facility?

Facilities that will be allowed to hire nurses to provide nursing care to residents are those with enhanced assisted living certification and/or special needs assisted living certification. These certifications are available only to licensed ALRs, and only licensed ACFs may also be licensed ALRs. With either of the two certifications, your facility can employ a nurse who may practice the full scope of activities allowed under her/his license.

14. What are the nurse training requirements for EALRs? What are the nurse training requirements for SNALRs?

There are no specific requirements for EALR nurses. SNALR nurses should have experience with dementia.

15. Will nursing assistants be required to have certification as a certified nurse aide (CNA) and will special education be required for nursing assistants for special needs, such as dementia care? If yes, will the certification have to be renewed annually? Will the DOH have to approve the education?

"Certified Nurse Aide (CNA)" is the job title for nurse aides that work in nursing homes. Nursing assistants that work in other settings, such as ALRs, are not required to have certification as a CNA. On-going in-services on dementia care should be part of maintaining compliance with continuing education requirements.

16. Will physicians have specialized training to update them on the DOH regulations and levels of care between SNF, retirement community, independent living, assisted living, etc.?

The Department does not intend to provide any training to physicians at this time.

17. When ALR residents are contracting directly with a LHCSA for services, is the LHCSA required to meet the ACF/ALR requirements as well or does it just have to meet LHCSA regulations? I ask this primarily in reference to medication assistance.

In this situation, the ALR must ensure that the LHCSA provides medication assistance in compliance with adult home or enriched housing program regulations and guidelines. If upon inspection it is determined that medication assistance is not in compliance with these regulations and guidelines, the ALR will be cited for non-compliance regardless of whether the assistance is provided by the ALR or the LHCSA. The LHCSA may also be cited if it has failed to maintain compliance with LHCSA regulations.

18. Can an ALR admit and retain a resident on oxygen who puts on and takes off the tank by himself? The only help he gets is that staff goes downstairs and gets the tank for him.

Yes. Adult homes and enriched housing programs with or without ALR licensure may admit and retain residents on oxygen who can safely self-manage their oxygen tanks.

19. Can an ACF that is not an ALR admit and retain a resident with a walker who gets around by himself?

Yes.

20. Can ALR staff provide additional personal care services if no home care agency is involved?

Staff of ACFs with or without ALR licensure can provide personal care services. There is no limit to how much personal care they can provide. The presence of a home care agency is not relevant.

21. If the ALR primarily fills the role of "coordinating" services (via a LHCSA) as opposed to providing the services directly to residents, how does this tie into minimum staffing requirements? Does the LHCSA staff providing cluster care services in our building count toward the staffing requirements?

The ALR must maintain compliance with the staffing and service requirements for adult homes or enriched housing programs, whichever applies. It can contract with a LHCSA to meet these requirements. If the LHCSA fails to provide staff and services in compliance with the requirements for ALRs, the ALR will be cited for non-compliance.

If the resident is Medicaid-eligible and the ALR through its limited LHCSA or home care services agency plans to bill Medicaid for services, additional requirements apply. For example, neither the ALR limited LHCSA nor the home care services agency may bill Medicaid for any personal care services unless the resident is totally dependent on human assistance for the type of personal care provided, e.g., bathing. LHCSAs cannot bill Medicaid directly. They must bill Medicaid through the CHHA with whom they have a contract.

22. What are the timeframes for hiring nurses and allowing them to provide nursing services to residents? Does this staffing need to be set up within the 60-day timeframe?

Facilities cannot allow nurse employees to provide nursing services to residents prior to obtaining approval from the Department of Health for EALR or SNALR certification.

23. Question: I have a licensed adult home. There are also independent living units in the same building. I want to convert my independent living units to ALR, but they all have kitchenettes which I believe are not permitted in ACFs. What can I do about this?

Kitchenettes are permitted in the enriched housing program. You should review the requirements for this program. You may apply for an enriched housing program license for your independent living units as well as ALR licensure.

24. I plan to use a home health agency to provide all Medicaid-reimbursable services. Do I have to have a contract with the home care agency? If so, what provisions should be included in the contract?

No, you do not have to have a contract with the home care services agency. However, residents need to be given freedom of choice in the home care services provider that they select.

25. In an ALR, if a resident is chair-fast and requires the assistance of one person to transfer, must the resident live on the first floor?

Yes.

26. In an ALR without EALR certification, can we require new admissions to have a full-time aide if we feel they need one? Can we require this in an EALR?

ALRs with or without EALR certification can require the applicant to have a full-time aide as a condition of residency. However, the applicant must be informed of this requirement prior to signing the residency agreement, and the residency agreement and the Interdisciplinary Service Plan must clearly address what the resident is required to do in order to maintain residency in the ALR.

27. What is the Department's definition of unmanaged incontinence?

Incontinence is uncontrolled loss of urine or feces. Unmanaged incontinence occurs when there is no intervention that results in successful toileting.

28. What are the criteria for employee training in general and in medication assistance?

Staff training requirements for adult homes without EALR or SNALR certification are located at Title 18 of the Social Services Law, §487.9. Staff training requirements for enriched housing programs without these certifications are located at Title 18 of the Social Services Law, §488.9.

The January 25, 2005 Dear Administrator Letter (DAL) HCBC 05-03 provides guidance on the development of policy and procedure for medication assistance. Training on this guidance is provided by the Brookdale Center on Aging of Hunter College, under contract to the Department, in a "train-the-trainer" format. The training focuses on the proper procedures and practices for medication acquisition, storage, assistance, recording and disposal. Administrators and staff trainers have and will receive invitations to attend.

29. What kind of staffing is need for evacuation of the building? The fire department is 100 yards away. Is this enough?

The distance between the building and the fire department is not relevant. Staffing needs for evacuation depend on a number of factors including the characteristics of the building and the level of independence of the residents.

30. Is an ALR limited to 120 beds?

No.

31. Will any of the new guidelines on residents' rights, model residency agreement, staffing requirements, etc., be mailed to facilities?

No. This information will be available on the Department's website.

32. In an EALR, do I have to admit applicants who have one or more of the needs or conditions listed in the June 3, 2005 letter? For example, do I have to admit applicants who require physical assistance from another person to walk?

No. EALRs may but are not required to admit individuals with these conditions and needs.

33. Can an ALR administrator do case management?

Yes.

34. Does the resident have a choice of which home health agency he/she uses or is it designated by the facility?

Residents may choose their own home care services agency. ALRs, EALRs and SNALRs may not designate the home care agencies that residents must use.

35. Regarding the employment of a registered nurse, what are the shift requirements?

Please review the staffing guidelines posted on the Department's website. EALRs are required to provide nursing services through either their own employees or a home care services agency. The number of nurses is dependent on resident needs in accordance with the resident's medical evaluation and ISP, applicable professional standards of practice, and the requirements of law. In an EALR there must be a licensed nurse (RN or LPN) present in the residence 24 hours a day, 7 days a week. If the on site nurse is an LPN, there must be an RN either on site or on call and available for consultation by phone 24/7.

Nursing coverage is not required in an SNALR but is recommended. A SNALR should have licensed staff (RN or LPN) on site on both day and evening shifts and available for consultation at all other times. Again, the number of licensed staff is dependent on resident needs.

36. Question: This is a question about the use of LPNs under the supervision of RNs in SNALRs and EALRs. Can the supervising RN be on call, on the campus elsewhere, etc. Please define supervision by an RN. What is the LPN allowed to do?

The supervising RN can be on call. Supervision of LPNs by RNs is defined in the Nurse Practice Act as is LPN scope of practice.

37. Will EALR and SNALR staff have continuing education unit (CEUs) requirements?

Yes. The requirements are provided in "Staffing Qualifications", which can be accessed on the Department's website.

38. Question: Is only the SNALR director required to have 60 hours CEUs, or all directors? The CEU requirement for case managers is 20 hours. Can this count as part of the director's 60 hours if the director is also the case manager?

ALR, SNALR and EALR administrators are required to have 60 CEUs every two years. If the case manager is also the administrator, the case manager's 20 CEUs can be counted as part of the administrator's 60 CEU requirement.

E. ARCHITECTURAL REQUIREMENTS

1. With regard to the five required safety features for ALRs in the June 3, 2005 letter, is an existing building required to make all of these changes, despite the cost it may incur, or might it be grandfathered? Older buildings and even many newer ones would not meet all of these specifications. If a facility does need to make these changes, what is the timeframe in which it must be completed?

With the exception of the handrails requirement in instances in which this would reduce corridor width to less than the minimum, the Department is not considering waiving any of these safety features for ALRs at this time. Compliance with these requirements must be demonstrated prior to issuance of an operating certificate.

2. There is a sixth safety feature (smoke barriers) that EALRs and SNARs with a building capacity of 17+ residents must have. Will the Department consider waiving this requirement?

No.

- 3. With regard to the requirement that there be handrails on both sides of all resident-use corridors and stairways, we currently have a waiver for handrails to be on a single side of the corridors. Will this waiver apply to the ALR as well or do we need to submit a new waiver request? Will DOH waive the requirement that there be handrails on both sides of the hallways?**

You must reapply for a waiver of this specific requirement and justify why it is not feasible to put handrails on both sides of corridors. With appropriate justification, the Department may approve your request that this requirement be waived.

- 4. Do apartments in ALRs that are EHPs have to be sprinklered, or just the common areas?**

Apartments and common areas in ALRs that are EHPs must be sprinklered.

- 5. In an ALR, what is a supervised smoke detection system? What does supervised mean?**

A supervised smoke detection system is one where the system's components (individual detectors, wiring, magnetic door hold-open devices, etc.) are continually monitored 24 hours per day for proper operation at a constantly attended location within the building or at an approved remote receiving station.

- 6. Regarding the ALR requirement that fire protection systems must be directly connected to the local fire department or to a 24-hour attended central station, must each apartment or bedroom be connected, or can just hallways be connected?**

Each apartment or bedroom must be connected. Fire protection devices for fire detection, notification and extinguishment systems are to be located throughout the building including each apartment, and the central panel for the systems is to be connected to the local fire department, or to a 24-hour attended central station.

- 7. Our centralized emergency call system goes to a central box in the lobby. In ALRs, is it required that a staff person monitor it 24 hours per day, seven days a week?**

Yes.

NOTE TO ALR APPLICANTS:

In regard to the questions above on the safety feature standards, an applicant will be permitted to include as part of its application a request for Department approval of an alternate method of assuring resident welfare and safety. The proposal should describe how the alternative would meet the intended purpose of any of these safety features. Proposals will also be accepted that phase in modification to facilities to meet these standards over a specified period of time. The Department will review such requests on a case-by-case basis, considering the various facts and circumstances presented, consistent with law applicable to assisted living residences and adult care facilities. Such review would include but would not be limited to the following: documentation by architects, local code enforcement and/or fire/safety officials supporting the contention that the proposed alternative will meet the intended safety outcome of the particular feature; staffing availability in the event of evacuation; the proposed timeframe for the applicant to come into conformance with the specified safety features; documentation of hardship to applicants if the safety features were to be included; the fiscal impact of adding the safety features; and any other information applicants wish to submit.

The Department's reviewing of such requests will consider both the initial population in the facility to be licensed and the expected changes in resident cognitive ability and ambulation which would be expected to occur.

F. ALR, EALR and SNALR BIENNIAL FEES

1. With respect to calculation of the fees, how current must the data be?

The date that must be used in Section B, Biennial Fee Calculation (see item a for the ALR Licensure Fee Calculation) is the date of your ALR application. This is the date of your attestation signature in Section I.

2. How is the fee calculated if your building is new and you don't have residents yet?

If your building is not yet completed, submit the \$500 base ALR fee, and, if applicable, the fees for EALR and/or SNALR certification with your application. Do not submit the \$50 per resident fee with your application. The number of residents for which this fee must be paid will be determined at the time your operating certificate is approved. If the building is constructed, submit fees based on the total number of beds to be licensed.

3. I have a licensed ACF with a special needs unit. Do I have to pay the \$2,000 fee?

Yes.

4. With regard to the application fee, is the additional \$50 charge per resident whose income exceeds 400% of the Federal poverty level, an annual fee? If so, what is the anniversary of the original fee due date?

The ALR, EALR and SNALR fees are biennial fees, payable to the Department of Health every two years. Facilities that are operational must submit all fees (i.e., the \$500 ALR fee, the \$50/resident fee, and the EALR and SNALR fee) with the ALR application.

The fees submitted with the application are for the two year period that begins with the issuance of an operating certificate.

5. I am a resident of an adult home. The operator just came to me and requested that I tell him what my income is. He said the Assisted Living Reform Act requires him to get this information from me. Is this true? I think he is going to use this information to figure out how much he can raise the fees.

The Assisted Living Reform Act (which can be accessed on the Department's website at www.health.state.ny.us) requires that all Assisted Living Residences (ALR) must pay a biennial licensure fee to the Department of Health. The biennial fee is \$500 plus \$50 for every resident whose annual income exceeds 400% of the Federal Poverty Level. In 2005, this amount is \$38,080 per individual. If your operator intends to apply for ALR licensure, the Department requires him/her to maintain documentation for each resident who the operator claims has income that does not exceed this amount.

Facility operators cannot require current residents to provide this information. (They may require it of applicants for admission, however.) The Department requires ALRs to pay the per resident fee for any resident who isn't presumptively below the FPL due to Medicaid or SSI eligibility, or who declines to provide the operator with income information.

6. How do I document that a resident's income does not exceed 400% of the Federal Poverty Level?

You must maintain documentation of income for each resident for whom you do not pay the \$50.00 ALR fee. Residents who are eligible for Medicaid or Supplemental Security Income (SSI) are presumptively below the threshold. The form below provides a suggested format and lists the types of income that should be counted. Operators are not required to use this form

REPORT YOUR TOTAL INCOME FOR THE PREVIOUS CALENDAR YEAR

Resident's Name: _____

Calendar Year: _____

- If you are married, you must report your income as well as your spouse's income.
- Report all income, including Social Security (without Medicare premiums), pensions, interest from savings, IRA distributions, wages, etc.
- Fill in each line. If you did not have income in any category, check the "None" box.
- Your income information may be verified with the Social Security Administration, the NYS Department of Taxation and Finance and others. We may ask for copies of documents that verify your income.

Income Type	Your Yearly Income	None	Spouse's Yearly Income	None
1. Social Security (without Medicare) and/or Railroad Retirement Benefits				
2. Pensions and Annuities				
3. Capital Gains, Wages, Business Income, IRA				
4. Other Income				
5. Interest and Dividends				
TOTAL YEARLY INCOME (Add lines 1 – 5)				

Please read carefully and sign below:

I certify that the information on this form is correct. I authorize _____ (name of residence) to release this information to the New York State Department of Health upon request.

7. How is \$50 fee calculated when the facility is not fully occupied?

Calculate the fee on the basis of the residents in the facility as of the date of your ALR application. The date of your ALR application is the date of the attestation in Section I.

8. In order to submit the correct ALR fee it is necessary to poll residents as to their income level. How do we calculate the fee if some residents decline to provide information on their income?

You must pay the \$50 fee for every resident for whom you do not have documentation that his/her income is less than 400% FPL.

G. CONSUMER EDUCATION AND RESIDENTS' RIGHTS

1. How will the consumers be made aware of the ALR, etc.?

Licensed ALRs will market themselves to the community as such. The Department of Health and the State Office on Aging are developing a consumer handbook on assisted living. ALRs must provide this handbook or guide to any person who expresses interest in the ALR.

H. ALR, EALR AND SNALR CHARGES

1. In an ALR, am I required to offer an all-inclusive rate to all residents, or can I charge private pay residents more than those who are SSI eligible? If I can charge different rates, how should I present this information?

An operator is responsible for providing at a minimum all the basic services that must be provided to residents, and any rate charged must include these basic services. Rates may vary depending on whether the resident is SSI or private pay. Rates may also vary depending on the level of additional services over and above the minimum set of services that are provided. Some operators have a tiered system for services and fees. The residency agreement must fully explain to residents and their representatives the various levels of care available at the residence, and the fees for the various levels of care.

2. If a resident requires skilled nursing care, will it be Medicare reimbursable? Would rates be comparable to Medicare's nursing home reimbursement rates?

ALRs, SNALRs and EALRs are not nursing homes. Under federal rules and regulations they cannot participate in Medicare. ALR, SNALR and EALR residents may be eligible for Medicare skilled nursing and home care services. Certified Home Health Agencies (CHHAs) may bill Medicare for services. Licensed Home Health Care Agencies may not. To obtain Medicare reimbursement for eligible services, a CHHA would need to be involved in providing the care.

3. If residents desire or need nursing services, can the facility provide the service and bill the resident a unit charge for the service (e.g., a \$20 dressing change)?

EALRs and SNALRs may employ nurses to deliver nursing services to residents. Facilities can decide how to charge for the nursing services delivered to private pay residents.

4. If a facility applies for EALR, can one floor provide ALR at one rate and one floor provide EALR at a higher rate, as resident needs become greater?

Yes.

I. MODEL RESIDENCY AGREEMENT

1. Regarding the Model Residency Agreement, must we use all of the exhibits?

If you are using the Model Residency Agreement, you must use all of the exhibits. ALRs are not required to use the Model Residency Agreement but are highly encouraged to do so. ALRs that choose to use another residency agreement or to substitute other wording or another exhibit must obtain Department

approval of their form prior to using it. Divergence from model language will increase the amount of time required to review the document.

2. What is the difference between Exhibit I.C. and III.B.? Both of these exhibits refer to additional, supplemental or community fees.

Exhibit I. C. asks for a description of additional services or amenities available for an additional, supplemental or community fee, and a description of who will provide the services if not the operator. The focus of this exhibit is services, not fees. Exhibit II.B. asks for a description of any supplemental, additional or community fees. The focus of this exhibit is a description of fees and charges, not services. There may be some overlap.

3. Regarding section I.A.4: is having the resident provide an inventory of all items they move in with them a legal requirement?

Having an inventory is consistent with the regulatory requirement that the admission agreement enumerate the materials and equipment that the operator is required to provide, and to enumerate in detail a schedule of any other material and equipment the operator agrees to furnish and supply to the resident. An inventory is a way to ensure that it is clear which furnishings, etc are those that the operator has supplied, and which are those brought by the resident.

4. We intend to use the Model Admission Agreement developed by the Department. When we submit our ALR application, is it enough to say that we will use it without revising the format? Or do we include a completed sample admission agreement? In your application, state that you will use the model residency agreement without modifying the format and provide a copy of your organization's agreement.

5. Regarding Model Residency Agreement Section I.A.4: is it a legal requirement that residents must provide an inventory of all items that they bring with them when they move in?

Having an inventory is consistent with the regulatory requirement that the admission agreement enumerate the materials and equipment that the operator is required to provide, and to enumerate in detail a schedule of any other material and equipment the operator agrees to furnish and supply to the resident. An inventory is a way to ensure that it is clear which furnishings, etc., are those supplied by the operator, and which are those that are brought by and belong to the resident.

6. Regarding Model Residency Agreement Section I.B.2: there is no mention of a meal credit for unused meals, which we currently offer to our residents.

An operator can add a meal credit to the Residency Agreement for missed meals if the operator offers it. Such Residency Agreement would not be considered the Model Residency Agreement.

7. Regarding Model Residency Agreement Section III.A.1: this refers to basic services as outlined in Section I.B., but is it intended to include rent as well, i.e., the housing accommodations and services referenced in Section I.A.? If not, where do the fees go for housing accommodations and service go?

Yes, it is intended that the cost of housing accommodations be included in payment. The agreement should refer to payment for housing accommodations as described in Section I.A. as well as the Basic Services described in Section I.B.

8. Regarding Model Residency Agreement Section II.E.1: we prefer to provide 60 days notice, not 45. Is this allowed?

Yes. The 45 day period is the minimum notice period.

9. Regarding Model Residency Agreement Section III.F: is offering a bed reservation a legal requirement? If so, under what circumstances? We currently offer no bed reservation program. If a resident wants to take an apartment, the fees commence once they agree to do so. Additionally, residents continue to pay their rent and services fees regardless of whether they are in the apartment, e.g. if they leave to visit family for a month.

Yes, it is a legal requirement. See 18 NYCRR 487.5(d)(6)(xiii): "The admissions agreement shall at a minimum: state charges, which may not exceed the basic rate, to be levied for reserving a residential space in the event of temporary absence of the resident, and the length of time the reservation shall apply."

This requirement would be essentially satisfied by having a rental agreement under which the resident is charged for housing and is assured of the continuing availability of the housing during the term of the agreement, regardless of whether the resident is temporarily absent.

10. Regarding Model Residency Agreement Section IV: it is a legal requirement to provide to the resident a final written statement of his/her payment and personal accounts no more than three business days after the resident leaves the residence. In addition, the operator must also return at the time of the resident's discharge, but in no case more than three business days, any of the resident's money or property which comes into the possession of the operator after the resident's discharge. As a practical matter, we are unable to do this until all charges for the month are in, which could be up to four weeks, if a resident left on the first day of the month.

A four-week delay is not acceptable. The 3-day requirement is in statute (Social Services Law (SSL) section 461-c(3), and regulation (18 NYCRR 487.5(d)(6)(xviii)).

11. Regarding Model Residency Agreement Section V: what is intended by the phrase that addresses voluntary transfer of money, property or things of value to the operator.

This refers to gifts made by the resident to the operator.

12. Regarding Model Residency Agreement Section X.6: if a resident changes from basic ALR to EALR does he/she sign a new contract if the basic ALR contract had an EALR addendum?

If a resident changes from basic ALR to EALR or SNALR, the resident and operator would need to execute the EALR or SNALR addendum, and assuming the services provided to the resident and the charges for such services under the original ALR Residency Agreement will change as a result of admission into the EALR or SNALR, an amendment to such Residency Agreement would be needed to reflect such changes.

13. Regarding Model Residency Agreement Section XV: there is no mention of a procedure for permissible customization of apartments, an option we currently offer residents.

Additional or supplemental services are permissible, as long as the services and charges for same are set forth in the residency agreement.

14. There seems to be no mention in the Model Residency Agreement of requiring residents to enroll, at their own expense, in medical insurance programs acceptable to the operator.

ACF residents have the right to manage their own financial affairs and to make personal decisions. An operator cannot mandate this.

15. Nothing is said in the Model Residency Agreement regarding the resident's responsibility for purchasing personal property and liability insurance coverage.

ACF residents have the right to manage their own financial affairs and to make personal decisions. An operator cannot mandate this.

16. The Model Residency Agreement omits reference to the resident's and the representative's responsibility for the condition of the premises upon moving out. In addition, nothing is mentioned about fire or casualty. We are a smoke-free facility. The model residency agreement does not include such a provision. Is it ok to add provisions covering these issues?

Operators may propose additional language in the residency agreement. The Department will review the additional language and respond. Residency agreements must be approved by the Department before they can be used.

17. There is no reference in the Model Residency Agreement to the operator's right to amend its requirements from time to time to maintain compliance with legal changes and other updating of provisions.

If the operator wants to propose some additional language in the residency agreement as part of the application process the Department will review and respond.

18. The Model Residency Agreement differs from the residency agreement currently used in my facility and approved by the Department. I plan to use the Department's Model Residency Agreement. Upon becoming an ALR, are all of my residents required to sign a new residency agreement based on the Model Residency Agreement?

The Assisted Living Reform Act states that all residents of ALRs must enter into residency agreements with the operator of the ALR which meet the requirements of PHL Article 46-b. Our expectation is that most operators, including those that are current operators of adult homes and enriched housing programs, will use the Model Residency Agreement. Those that do not will have to obtain the prior approval of the DOH of their particular residency agreement. In order to obtain such approval, the operator will need to demonstrate that all legal requirements of PHL Article 46-b relative to the residency agreement are satisfied.

J. OTHER QUESTIONS

1. Why weren't the current enriched housing program and adult home regulations rolled into the new ALR, or at least grandfathered in? We now have three different sets of standards rather than just one.

The Assisted Living Reform Act did not specify rolling existing regulations together. Instead, it created a task force that will, among its charges, make recommendations regarding redundancy of existing regulations.

2. Other than being able to use the term "assisted living" in its marketing materials, why should a licensed ACF become an ALR? What are the advantages and disadvantages?

There are two primary advantages to licensure as an ALR: (1) only ALRs can apply for certification as Enhanced Assisted Living and through this certification offer consumers "aging in place" services; and (2) only ALRs can apply for certification as Special Needs Assisted Living and through this certification hold themselves out as providing specialized care for specific populations, such as those with dementia.

The primary disadvantage of **not** applying for ALR licensure is that without this licensure, you cannot offer "aging in place" services, nor can you hold yourself out as offering specialized care for people with dementia.

3. Is thought being given to mentally disabled, traumatic brain injury or any other group for the special needs assisted living residence certification?

Additional categories are being explored but no decisions have been made at this time.

4. Does the Assisted Living Reform Act require any change in regulations for facilities opting to remain an adult home?

No. However, the Act provides the following broader charge to the Task Force on Adult Care Facilities and Assisted Living Residences:

“...update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence.”

5. Will there be any opportunity to allow Medicaid funding in the ALR?

ALRs are not eligible to participate in Medicaid as a provider category. However, some individuals in these facilities may be Medicaid-eligible and entitled to such benefits.

6. We are a Veterans Administration (VA) facility and will be applying for adult home licensure. How does this work with our federal compliance requirements?

The Department of Health has oversight of licensed adult homes and holds them to New York State requirements for such facilities. The VA has oversight of your facility to ensure that it meets all federal requirements for VA facilities.

7. What is the probability that in the future a moratorium will be imposed on approving ALR beds?

The Department does not have any plans to take such action at this time.

8. Where should we direct further questions regarding the ALR/EALR/SNALR application? Is there a particular person?

You may phone 1-866-893-6772.